IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

MFA.No. 474 of 2000(B)

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OPMV.2189/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI

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APPELLANT:

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K.S. Suresh Babu, S/o. Sreedhara Kuruppu, Sreepan, P.O. Melur, Quilandy (Owner).

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENTS:

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1. Deepa, D/o. Gopalan Vaidyar, 23 years, Pilappatta, Porur amsom desom, P.O. Porur.

2. Divyadas, D/o. Deepa, 1 year (minor), represented by guardian and mother 1st petitioner Deepa.

3. Meenakshikutty, W/o. Damodaran Vaidyar, aged 70 years Komalalayam, Vettikkattiri amsom, Velluvangad.

4. Navyadas, D/o. Deepa, minor aged 4 years, represented by guardian and mother 1st petitioner Deepa.

5. The Oriental Insurance Company Ltd., Nilambur.

6. P.Veerankutty, S/o. Moideenkutty, Payyapparamba, Pandikkadu P.O.,Malappuram District.

BY ADV. SRI.K.A.SALIL NARAYANAN

SRI.K.M.SATHYANATHA MENON

SRI.GEORGE CHERIYAN,SC INSURANCE,B/O

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDERS ON CMP NO.2793/00 AND CMP 5952/00 IN CROSS OBJECTION
IN MFA 474/2000

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DISMISSED.

SD/- J.B.KOSHY, JUDGE.
SD/- V.GIRI, JUDGE.

23/8/2007

**J.B.Koshy & V. Giri, JJ.**
**==========**
**M.F.A.No.474 of 2000**
**&**
**Cross Objection**
**==========**

**Dated this the 23rd day of August, 2007.**

**JUDGMENT**

**Koshy,J.**

This appeal is filed by the owner of the vehicle. His bus was capsized and the conductor in the bus died due to the accident. The legal representatives of the deceased claimed compensation claiming Rs.4,44,000/-. The Tribunal has awarded a compensation of Rs.3,13,000/- with interest thereon at the rate of 12%. Relying on F.I.R. the Tribunal held that the accident occurred due to the negligence of the driver of the vehicle. But it was found that the liability of the Insurance Company was limited and therefore the Insurance Company was directed to deposit an amount of Rs.78,824/- with interest under the Workmen's Compensation Act and proportionate cost. The balance amount was allowed to be recovered from respondents 1 and 2 driver and the owner.

2. The contention of the owner is that the accident was not due to the negligence of the driver of the vehicle, but due to the mechanical error. Even though the F.I.R. was filed his driver was not charge sheeted. It was also submitted that no independent evidence was adduced to show that there was negligence on the part of the driver of the vehicle. Further contention is that he was not served with any notice of accident. The address shown in the award was P. Veerankutty, Payyan parambu, Pandikkadu, Malappuram District. At the time of adjudication, he was in Wynad District and therefore he did not receive any notice in the appeal memorandum. He also did not receive any notice, but he was declared ex parte. It is further contended that he was not the owner of the vehicle at the time of the accident. Counsel for the Insurance Company contended that they were directed to pay the compensation payable under the Workmen's Compensation Act and that was paid. They have no further liability as the vehicle was insured only by an Act Policy. We accept the contention of the Insurance Company.

3. However, the question whether any compensation can be awarded against the employer over and above the amount

payable under the Workmen's Compensation Act with regard to the injuries caused to any employee during the course of employment and whether the accident occurred due to the negligence of the driver of the bus are disputed very seriously by the owner of the bus. The driver though did not file any appeal on receiving the notice, he filed cross objection, it is not maintainable as no cross objection can be filed by a co-respondent in an appeal filed by one of the respondents. At the maximum, he can be treated as a co-appellant.

4. On the facts and circumstances of the case, we remand the matter on payment of cost of Rs.5,000/- by the appellant to the counsel for the claimant. There is no further liability on the Insurance Company. With regard to the liability of the first and second respondents, the matter shall be re-adjudicated, if the cost of Rs.5,000/- is paid within one month from today. Appeal and the cross objection are disposed of and the matter is remanded with regard to a decision of quantum and liability of the owner and the driver of the vehicle. We allow the claimants to adduce further evidence. We make it clear that even if he has transferred the vehicle before the accident he is liable to pay the

difference of amount after adjusting the amount paid by the Insurance Company as he was registered owner at the time of the accident, in view of the decision in **T.V. Jose** v. **Chacko P.M. @ Thankachan and others** - A.I.R. 2001 S.C. 3939). After satisfying the award, he may be able to recover further from the transferee. But for that he has to implead the transferee also.

Appeal is allowed by way of remand. Parties may appear before the Tribunal on 27.11.2007.

J.B.Koshy,
Judge.

V.Giri,
Judge.

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